

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:07-cv-226
)	
ROY M. GIBBS, ET AL.,)	Judge Wendell A. Miles
)	
Defendants.)	

ORDER OF SALE

A final judgment was entered by this Court in the above-entitled action, on July 17, 2007, ordering that plaintiff's federal tax liens be foreclosed and that the subject property ("Forres Property"), described below, be sold pursuant to 28 U.S.C. § 2001.

Lot 12, Plat of Fyfe's Addition to the Village, now City of St. Joseph, Berrien County, Michigan, according to the Plat thereof, recorded July 2, 1887 in Book 2 of Plats, page 25. Also that part of Lot 11, said Plat of Fyfe's Addition described as follows, to-wit: Commencing at the Southwest corner of said Lot 11; thence North 4.20 feet; thence East, parallel with the South line of Lot 11, 29.48 feet; thence South, parallel with the West line of Lot 11, 1.80 feet; thence East 0.82 feet; thence South 2.40 feet; thence West 30.30 feet, along the South line of Lot 11, to the place of beginning.

Accordingly, **IT IS HEREBY:**

1. **ORDERED** that the United States Marshal for this District, or such representative as he may appoint or employ, at the direction of the Tax Division of the United States Department of Justice, is authorized and directed under 28 U.S.C. §§ 2001 and 2002, to sell, free, and clear of all right, title and interest of all parties to this action, their heirs, successors and assigns, the Forres Property at public auction at a date and time to be determined by the Marshall.

2. **ORDERED FURTHER** that the Marshall or his representative is authorized to have free access to the Forres Property and to take all actions necessary to preserve the Forres Property, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the property, until the deed to the Forres Property is delivered to the ultimate purchaser.

3. **ORDERED FURTHER** that the terms and conditions of the sale are as follows:

a. the sale of the Forres Property shall be free and clear of the interests of the United States of America, Roy M. Gibbs, Constance L. Bruno, Chemical Financial Corporation, and RMG Enterprises, Inc.

b. the sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Forres Property, and easements and restrictions of record, if any;

c. the sale shall be held either at the courthouse of the county or city in which the Forres Property is located or on the Forres Property's premises;

d. the date and time for sale are to be announced by the United States Marshal or his representative;

e. notice of the sale shall be published once a week for at least four consecutive weeks before the sale in the St. Joseph Herald Palladium and, at the discretion of the Marshal or his representative, any other additional newspaper issued and of general circulation in Berrien County that he or his representative deems appropriate. The notice shall contain a description of the property and shall contain the terms and conditions of sale in this order of sale;

f. The minimum bid is \$80,000.00. If the minimum bid is not met or exceeded,

the Marshal or his representative may, without further permission of this Court, and under the terms and conditions in this order of sale, hold a new public sale, if necessary, and reduce the minimum bid;

g. the successful bidder(s) shall be required to deposit at the time of the same with the Marshal or his representative a minimum of ten percent of the bid, with the deposit to be made by certified or cashier's check payable to the United States District Court for the Western District of Michigan, or cash. Before being permitted to bid at the sale, bidders shall display to the Marshal or his representative proof that they are able to comply with this requirement. No bids will be received from any person(s) who have not presented proof that, if they are the successful bidders(s), they can make the deposit required by this order of sale;

h. the balance of the purchase price for the Forres Property is to be paid to the clerk of this Court within six days after the date the bid is accepted, by a certified or cashier's check payable to the United States District Court for the Western District of Michigan. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale, including commissions due under 28 U.S.C. § 1921(c), with any amount remaining to be deposited with the Court and distributed with the proceeds of the subsequent sale. The realty shall be again offered for sale under the terms and conditions of this order of sale. The United States may bid as a credit against its judgment without tender of cash; and

i. the sale of the property shall be subject to confirmation by this Court. On confirmation of the sale, the Marshal shall execute and deliver a quit claim deed conveying the property to the purchaser. On confirmation of the sale, all interests in, liens against, or claims to, the property that are held or asserted by all parties to this action are discharged and extinguished.

The Marshal shall make return of the Confirmation of Sale for each property, with his proceedings endorsed thereon, showing the manner in which he has executed the same, within sixty days from the date of the sale of each property.

j. the sale is ordered pursuant to 28 U.S.C. § 2001, and is made without right of redemption.

10. **ORDERED FURTHER** that until the property is sold, defendant-taxpayer Roy M. Gibbs shall take all reasonable steps necessary to preserve the property (including all buildings, improvements, fixtures and appurtenances on the property) in its current condition including, without limitation, maintaining a fire and casualty insurance policy on the property. He shall neither commit waste against the property nor cause or permit anyone else to do so. He shall neither do anything that tends to reduce the value or marketability of the property nor cause or permit anyone else to do so. The defendants shall not record any instruments, publish any notice, or take any other action (such as running newspaper advertisements or posting signs) that may directly or indirectly tend to adversely affect the value of the property or that may tend to deter or discourage potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do so.

11. **ORDERED FURTHER** that all persons occupying the property shall leave and vacate the property permanently within 30 days of the date of this Order, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the property). If any person fails or refuses to leave and vacate the property by the time specified in this Order, the Marshal and his deputies are authorized and directed to take all actions that are reasonably necessary to bring about the ejectment of those persons. If any person

fails or refuses to remove his or her personal property from the property by the time specified herein, the personal property remaining on the property thereafter is deemed forfeited and abandoned, and the Marshal and his deputies are authorized to remove it and to dispose of it in any manner they see fit, including sale, in which case the proceeds of the sale are to be applied first to the expenses of sale and the balance to be paid into the Court for further distribution.

IT IS SO ORDERED.

Date: April 11, 2008

/s/ Wendell A. Miles
HON. WENDELL A. MILES
United States District Judge